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09/870,199	05/29/2001	Roger Hoffman	P/2-96	7864

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EXAMINER

BOYCE, ANDRE D

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,199

Applicant(s)

HOFFMAN, ROGER

Examiner

Andre Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-10 have been examined.

Drawings

2. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

Claim Objections

3. Claim 2 is objected to because of the following informalities: the Examiner believes "reordered" should be --rescheduled--, based upon the specification and claim 7. Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

Independent claim 1 is merely a database, including non-functional descriptive material, and is deemed to be software per se, thus non-statutory. In addition, for a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, independent claim 6, including the recited steps of inputting into a computer database a product schedule, inputting into the database new orders, etc. is a nominal recitation of technology, which does not overcome the rejection.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case the claimed invention matches new orders with the product schedule, thereby producing a useful, concrete, and tangible result, but not within the technological arts as explained above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 5-7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smirnov et al (USPN 6,321,133), in view of Kaneko et al (USPN 4,958,292).

As per claim 1, Smirnov et al disclose a system for bundling orders (i.e., determination of whether or not an additional similar job may be processed, wherein jobs are grouped into buckets, column 4, lines 54-58 and column 13, lines 56-60) comprising; a database (i.e., model 144 organized as a database, column 12, lines 37-40 and column 11, lines 59-61); said database comprising information relating to a production schedule and new ordered products (i.e., scheduler 148 providing scheduling information and new orders 140, column 12, lines 40-44); and said system comparing said new ordered product to said scheduled products (i.e., determining the effect of loading a particular manufacturing process with additional new orders, column 12, lines 55-57). Smirnov does not explicitly disclose determining whether said new orders and said scheduled products can be bundled. Kaneko et al disclose determining the number of new products to be added to the planned number of products in order to fulfill the restraint conditions (i.e., bundling of

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orders, column 9, lines 23-26 and column 18, lines 19-31). Both Smirnov et al and Kaneko et al are concerned with bundling products during production, in order to lower the product cost, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include determining whether said new orders and said scheduled products can be bundled in Smirnov et al, as seen in Kaneko et al, as an efficient means of planning the production schedule of a mixed product line, as disclosed by Kaneko et al (column 6, lines 38-44).

As per claim 2, Smirnov et al disclose said production schedule is reordered after bundling said new orders (i.e., reschedule command 150 in response to order 140, column 12, lines 40-46).

As per claim 5, Smirnov et al disclose said system determines bundling of said orders based on greatest cost savings (i.e., determining the subset of N jobs that will maximize the value at the lowest cost, column 13, lines 41-44).

As per claim 6, Smirnov et al disclose a method for bundling orders for same product or a similar product (i.e., determination of whether or not an additional similar job may be processed, wherein jobs are grouped into buckets, column 4, lines 54-58 and column 13, lines 56-60) comprising; inputting into a computer database a product schedule (i.e., model 144 organized as a database, column 12, lines 37-40 and column 11, lines 59-61); and inputting into said computer database new orders for products (i.e., scheduler 148 providing scheduling information and new orders 140, column 12, lines 40-44). Smirnov et al does not explicitly disclose matching said new orders with said product schedule. Kaneko et al disclose

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determining the number of new products to be added to the planned number of products in order to fulfill the restraint conditions (i.e., bundling of orders, column 9, lines 23-26 and column 18, lines 19-31). Both Smirnov et al and Kaneko et al are concerned with bundling products during production, in order to lower the product cost, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include determining whether said new orders and said scheduled products can be bundled in Smirnov et al, as seen in Kaneko et al, as an efficient means of planning the production schedule of a mixed product line, as disclosed by Kaneko et al (column 6, lines 38-44).

As per claim 7, Smirnov et al disclose rescheduling said product schedule (i.e., reschedule command 150 in response to order 140, column 12, lines 40-46).

Claim 10 is rejected based upon the rejection of claim 5, since it is the method claim corresponding to the system claim.

8. Claims 3, 4, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smirnov et al (USPN 6,321,133), in view of Kaneko et al (USPN 4,958,292), in further view of Mesaros (US 2003/0126040).

As per claim 3, neither Smirnov et al nor Kaneko et al disclose said system calculates price of said new orders based on bundling. Mesaros discloses sellers of products lowering prices of products for large quantity buyers, since the fixed costs associated with production is spread over more products (§ 0004). Smirnov et al, Kaneko et al, and Mesaros are concerned with bundling products during production,

in order to lower the product cost, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include pricing the orders based upon bundling in Smirnov et al, as seen in Mesaros, as an effective way to distribute the fixed cost of producing the product over a larger quantity, as disclosed by Mesaros (§ 0004), thereby making Smirnov et al more efficient.

As per claim 4, neither Smirnov et al nor Kaneko et al disclose said system calculates in real time cost savings bundling said orders. Mesaros discloses an open session, wherein buyers 15 make a real time informed decision with respect to placing an order based on cost saving, determined via processor 100 (§ 0041-42). Smirnov et al, Kaneko et al, and Mesaros are concerned with bundling products during production, in order to lower the product cost, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include calculating real time cost savings in Smirnov et al, as seen in Mesaros, as an effective way to distribute the fixed cost of producing the product over a larger quantity, as disclosed by Mesaros (§ 0004), thereby making Smirnov et al more efficient.

Claims 8 and 9 are rejected based upon the rejections of claims 3 and 4, since they are the method claims corresponding to the system claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Baseman et al (USPN 6671673) disclose generating a strategic business plan to improve operations.

-Magrath (The Gatekeepers) disclose techniques manufactures can use to bargain with retailers and distributors.

-Goss (USPN 6236901) discloses parallel organized unit-by-unit manufacturing and assembly systems.

-Bacin et al (USPN 6684117) disclose providing a procedure for scheduling small sets of orders with similar characteristics.

-Andrews (USPN 6285986) discloses combining products or services from one or more vendors.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



adb

April 17, 2005



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